

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 684 OF 2018**

Vilasini Appa Shirodkar, aged 63 years, wife of late Appa S. Shirodkar, Indian National, r/o H. No. 458, New Vaddem, Vasco-Da-Gama, Goa, through her POA, Shri Surendra Shirodkar.

.... Petitioner

Versus

Mr. Rizwan Sheikh, aged 44 years, Indian National, r/o H. No. 118, Sheikh Nabi House, Rangavi Estate, Issorcim, Vasco-Da-Gama, Goa.

.... Respondent

Ms. Suzette Pereira, Advocate for the Petitioner.

Mr. M. D'Souza with Mr. Ryan Menezes, Advocates for the Respondent.

CORAM : C.V. BHADANG, J.

DATE : 25th February, 2019.

ORAL JUDGMENT:

Rule made returnable forthwith. Mr. D'Souza, the learned Counsel, waives service for the respondent. Heard finally by consent of parties.

2. By the impugned order dated 21.06.2017, the Trial Court has dismissed an application (Exhibit-41), filed by the petitioner for addition of parties under Order I Rule 10 of CPC. A perusal of the impugned order shows that in para 7, the

learned Trial Court has observed that although, the petitioner has filed the application on the basis of two sale deeds i.e. 08.09.2015 and 23.11.2015, the copies of the sale deeds are not produced. The said observation appears to be apparently incorrect, as there is a copy of the list of documents produced, which is dated 04.11.2016, under which, the two sale deeds are produced on record.

3. Any application for addition of parties has to be considered, by examining as to whether, the proposed parties are either necessary or proper parties.

4. The learned Counsel for the respondent has pointed out that since after the impugned order was passed, the trial has proceeded and the evidence of the petitioner is closed and therefore, this application may not lie now, in the changed circumstances.

5. The learned Counsel for the petitioner, on the contrary, pointed out that the order closing the evidence of the petitioner has also been challenged before this Court in writ petition (Stamp No. 807/2019).

6. Be that as it may, considering the overall circumstances and having regard to the fact that the application has been rejected *inter alia* on the ground of non production of the sale deeds, which is factually incorrect, I find that it would be appropriate that the learned Trial Court reconsiders the application (Exhibit-41), on its own merits and in accordance with law.

7. In the result the following order is passed:

O R D E R

- (i) The petition is allowed.
- (ii) The impugned order is hereby set aside.
- (iii) The application (Exhibit-41) is restored to the file of the learned Trial Court, which shall decide the same on its own merits and in accordance with law.
- (iv) Rival contentions of the parties are left open.
- (v) Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

EV